

No.

4038

United States
Circuit Court of Appeals
For the Ninth Circuit.

ELIZABETH HOUSTON, as sole beneficiary under
the will of Otho S. Houston, deceased, and as
Executrix of the Estate of Otho S. Houston, de-
ceased,

Plaintiff in Error,

vs.

J. M. ROSBOROUGH,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.

No.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

LUCIUS K. CHASE, Esq., Title Insurance Building, Fifth and Spring Sts., Los Angeles, California.

For Defendant in Error:

WESTALL and WALLACE and R. M. FULTON, Esqs., Trust & Savings Building, Los Angeles, California.

United States of America, ss.

To J. M. ROSBOROUGH and to WESTALL & WALLACE, his attorneys: Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 9th day of May, A. D. 1923, pursuant to a Writ of Error filed and entered in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain suit, wherein Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased, is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error in the said Writ of Error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Benjamin F. Bledsoe
United States District Judge for the Southern
District of California, this 14th day of April,
A. D. 1923, and of the Independence of the
United States, the one hundred and forty-
seventh

Bledsoe

*U. S. District Judge for the Southern District
of California.*

[Endorsed]: 757 Civ. IN THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE

NINTH CIRCUIT ELIZABETH HOUSTON,
as sole beneficiary under the will of Otho S.
Houston, deceased, and as Executrix of the
Estate of Otho. S. Houston, deceased, Plaintiff in
Error *vs.* J. M. ROSBOROUGH Defendant in error.
Citation Service of the within citation admitted this
17th day of April, 1923. Westall & Wallace By
Joseph F. Westall, attorney for defendant in error.
FILED APR 25, 1923 CHAS. N. WILLIAMS,
Clerk By R. S. ZIMMERMAN, Deputy Clerk.

United States of America, ss.

The President of the United States of America

To the Judges of the District Court of the United
States, for the Southern District of California,
GREETING:

Because in the record and proceedings, and also in
the rendition of the judgment of a plea which is in
the said District Court, before you between J. M.
Rosborough, Plaintiff, and ELIZABETH HOUSTON,
as sole beneficiary under the will of Otho S. Houston,
deceased, and as Executrix of the Estate of Otho S.
Houston, deceased, defendant, a manifest error hath
happened, to the great damage of the said defendant
as by her complaint appears, and it being fit that the
error, if any there hath been, should be duly corrected,
and full and speedy justice done to the parties afore-
said in this behalf, you are hereby commanded, if
judgment be therein given, that then, under your seal,
distinctly and openly, you send the record and pro-

ceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 9th day of May, 1923, next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. William Howard Taft,
Chief Justice of the United States, this 10th
day of April in the year of our Lord one
thousand nine hundred and Twenty-three and
of the Independence of the United States the
(SEAL) one hundred and forty-seventh.

Chas N Williams

Clerk of the District Court of the United
States of America, in and for the Southern
District of California.

By R. S. ZIMMERMAN

Deputy Clerk.

The above writ of error is hereby allowed.

Bledsoe

Judge.

I hereby certify that a copy of the within Writ of Error was on the 10th day of April, 1923, lodged in the office of the Clerk of the said United States Dis-

trict Court, for the Southern District of California,
Southern Division, for said Defendants in Error.

Chas N Williams

Clerk of the District Court of the United States for
the Southern District of California.

By R S Zimmerman

Deputy Clerk.

[Endorsed]: United States Circuit Court of Appeals
for the NINTH CIRCUIT ELIZABETH HOUS-
TON, as sole beneficiary under the will of Otho S. Hous-
ton, deceased, and as Executrix of the Estate of Otho S.
Houston, deceased, *Plaintiff - - in Error vs.* J. M. ROS-
BOROUGH, *Defendant - - in Error* Writ of Error
Filed April 10—1923 Chas N Williams, Clerk R S
Zimmerman Deputy.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

- - - - -

ELIZABETH HOUSTON, as sole)
beneficiary under the will of Otho)
S. Houston, deceased, and as Ex-)
ecutrix of the Estate of Otho S.)
Houston, deceased,)

Plaintiff in error)

-vs-)

J. M. ROSBOROUGH)

Defendant in Error.)

AFFIDAVIT
OF SERVICE
OF WRIT OF
ERROR.

- - - - -

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

ALAN NICHOLS being sworn says: I am and was at the time of the service of the Writ of Error in the above entitled action, a citizen of the United States, over the age of eighteen years, and not a party to the within entitled action; I personally served the said Writ of Error on Westall and Wallace, attorneys for defendant in error, J. M. Rosborough, by delivering to and leaving with said Westall and Wallace, personally, on the 17th day of April, 1923, in the County of Los Angeles, State of California, a copy of the said Writ of Error.

Alan Nichols

Subscribed and sworn to before me this 25th day of April, 1923.

(Seal)

Anna S. Lewis

Notary Public in and for the County of Los Angeles,
 State of California.

[Endorsed]: No. 757 Civ. Dept.... IN THE UNITED STATES CIRCUIT COURT of appeals FOR THE NINTH CIRCUIT. ELIZABETH HOUSTON, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased. Plaintiff in error vs. J. M. Rosborough Defendant in error. AFFIDAVIT OF SERVICE *or* WRIT OF ERROR. Filed Apr. 25, 1923. Chas. N. Williams, Clerk By R. S. Zimmerman Deputy Clerk LUCIUS K. CHASE Attorney for Plaintiff in Error 441-443 Title Insurance Building LOS ANGELES CALIFORNIA

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN - DIVISION.

----- o -----

J. M. Rosborough,)	
	Plaintiff,)
- vs -)	
ELIZABETH HOUSTON, as sole	)	No. 757.
beneficiary under the will of Otho	)	At Law
S. Houston, deceased, and as Ex-)	
ecutrix of the Estate of the said)	
Otho S. Houston, deceased,)	
Defendant.)	

----- o -----

COMPLAINT FOR DECEIT

Plaintiff complains and alleges:

I.

That he (plaintiff) is a citizen of the United States and of the State of Texas, residing in the town of Victoria, county of Victoria, State of Texas;

II.

That defendant Elizabeth Houston, sued as sole beneficiary under the will of Otho S. Houston, deceased, and as executrix of the estate of the said Otho S. Houston, deceased, is a citizen of the United States of America and of the State of California, and a resident and inhabitant of the Southern Division of the Southern District of California, residing in the City of Los Angeles, county of Los Angeles, and State of California;

III.

That this is an action of a civil nature at law where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars and as set forth in the immediately preceding paragraph hereof, is between citizens of different states.

IV.

That on and prior to the 15th day of November, 1915, plaintiff was the owner of the following described lands and tenements:

Lot 1, Block "B", Poole and Jones Tract, in the City of Los Angeles, County of Los Angeles, and State of California, as per map recorded in Book 10, Page 194 of Maps, in the Office of the County Recorder of said County,

which said lands and tenements then stood of record in the name of Edwin S. Crawford and Carrie R. Crawford, respectively the son-in-law and daughter of plaintiff, who held the same in trust for plaintiff, together with all improvements thereon, and which, at the time of the filing of this complaint and at all times hereinbefore mentioned, were worth, to-wit, the sum of Eight Thousand (\$8,000.00) Dollars, and the rental value of which was Sixty (\$60.00) Dollars per month.

V.

That on or about the 27th day of October, 1915, the said Otho S. Houston, since deceased, offered to purchase said premises in the immediately preceding paragraph in this complaint described, and in order to induce plaintiff to convey same to the said Otho S.

Houston, offered to transfer or assign to plaintiff a certain promissory note, which, together with all endorsements thereon, is in the words and figures following, to-wit:

\$2.00 U. S. I. R. Stamps cancelled.

Note No. 1.

Los Angeles, California, Jan. 30, 1915. \$9904.00
Ten years after date, I promise to pay to Otho S. Houston, or order the sum of Nine Thousand, Nine Hundred and four (\$9904) Dollars, for value received, with interest thereon from date, until paid, at the rate of six per cent per annum, the interest payable semi-annually as it accrues, both principal and interest payable at Fort Worth, Texas. This note is given in part payment for a certain lot or parcel of land, lying and being situated in Crane County, Texas, 640 acres of land, more or less and more fully described as Section No. 13, Block No. 1, Certificate 40/4753 Grantee H. and T. C. Ry. Co. and the east half of Section No. 14 in Block No. 1, Certificate 40/4753, Grantee H. and T. C. Ry. Co. being 320 acres on which said real estate the vendor's lien is hereby expressly acknowledged by the maker hereof and retained by the payee for the better security of this note. All past due interest on this note shall bear interest from maturity thereof, until paid at the rate of ten per cen— per annum. It is understood and agreed that failure to pay this note, or any installment of interest thereon when due, shall at the election of the holder of them, or any of them, mature all notes this day given by me to said Otho S. Houston, in payment for said property. And it is

hereby specially agreed, that if this note is placed in the hands of an attorney for collection, or if collected by suit, or thorough the Probate Court, I agree to pay ten per cent additional on the principal and interest due, as attorney's fees.

(Signed) J A. Stroud

Lst. Payment \$3872.00 cash (Real Estate)

Note No. 1 9904.00—ten years

Assumed on

E. half Sec. 13 624.00—due in 30 years at 3% to

Containind 320 ————— state of Texas

acres \$14,400.00

Endorsed as follows:

Pay to the order of J. M. Rosborough Without
recourse on me"

Otho S Houston

memo

Int to July 30# 1915 \$297.12

and also offered to assign and transfer to plaintiff a certain Deed of Trust, dated on the 30th day of January, 1915, securing said promissory note, which said Deed of Trust was recorded on the 4th day of February, 1915, in Volume 2, at page 413 of Deed of Trust Records of Crane County, Texas, and said Deed of Trust is in the following words and figures, to-wit:

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KNOW ALL MEN BY THESE PRESENTS: That J. A. Stroud of the County of Los Angeles, in the State of California, for and in consideration of the sum of Ten Dollars to me paid by W. L. Smallwood

of the County of Tarrant, in the State of Texas, the receipt of which is hereby acknowledged, have Sold, and by these presents do Sell, Transfer, Convey and confirm unto the said W. L. Smallwood, trustee, and to his successors in this Trust, the following described property, to-wit:

Being all of Section No. 13, Block No. 1, Certificate No. 40/4753 H. and T. C. Ry. Co. survey, containing 640 acres more or less; also the east half of section No. 14, in Block No. 1, Certificate 40/4753 Grantee H. and T. C. Ry. survey, containing 320 acres of land more or less.

Together with all and singular the rights, members, hereditaments and appurtenances to the same in any manner belonging or appertaining.

TO HAVE AND TO HOLD, all and singular, the property above described unto the said W. L. Smallwood, Trustee, or his substitute forever. And I do by these presents bind myself, my heirs, executors and administrators to Warrant and Forever Defend, all and singular, the said property unto the said W. L. Smallwood, Trustee or his substitute herein, against the claim or claims of any or all persons whomsoever claiming or to claim the same or any part thereof.

THIS CONVEYANCE HOWEVER IS INTENDED AS A TRUST, for the better securing of OTHO S. HOUSTON of the County of Los Angeles, State of California, in the payment of one certain promissory note, of which the following is a substantial copy. Note. No. 1 dated Jan. 30, 1915 for \$9904 due ten years after date, payable to order of Otho S. Houston

at Fort Worth, Texas with interest from date at six per cent payable semi-annually.

bearing interest at the rate of 6 per cent per annum from date Upon payment of which said promissory note according to its face and tenor, being well and truly made, then, in such case, this conveyance is to become null and of no further force and effect, and shall be released at the cost and expense of the said J. A. Stroud But in case of failure or default in the payment of said promissory note, together with the interest thereon accrued, according to the terms and face, at the maturity of the same, then, in such event, said W. L. Smallwood, Trustee, is by these presents fully authorized and empowered, and it is made his special duty, at the request of the said Otho S. Houston or other holder of said note, at any time made after the maturity of said promissory note to sell the said above described property to the highest bidder, for cash, at public outcry, in front of the Court House door of said Crane or Ector County, State of Texas, on the first Tuesday of any month, between the hours of 10 o'clock a. m. and 4 o'clock p. m. first giving notice of the time, place and terms of sale for at least twenty days successively next before the day of sale, by posting up written or printed notices of such sale at three public places in the County of Crane, or Ector State of Texas, one of which shall be at the Court House door of said County, and by giving such other notice as is or may be required by law, and after said sale as aforesaid, to make to the purchaser or purchasers thereof a good and sufficient deed in law to the property so sold with the

usual covenants and warrants, and to receive the proceeds of said sale, and the same to apply to the payment of said note, the interest thereof accrued, and the expenses of executing said trust, including 10 per cent commission to said Trustee, holding the remainder thereof subject to the order of J. A. Stroud, the said grantor herein. It is expressly agreed that the recitals in the conveyance to the purchaser shall be full evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed; and it is hereby specially provided that should the said W. L. Smallwood, Trustee, from any cause whatever, fail or refuse to act, or become disqualified from acting as such Trustee, then the said Otho S. Houston, or other holder shall have full power to appoint a substitute, in writing, who shall have the same powers as are hereby delegated to the said W. L. Smallwood, Trustee, and I by these presents fully and absolutely ratify and confirm any and all acts which the said W. L. Smallwood, Trustee or his substitute as herein provided, may do in the premises by virtue hereof.

Witness my hand this 30th day of January, A. D. 1915.

J A. Stroud

State of California
County of Los Angeles

Before me, Ida M. Greatrake, a Notary Public in and for Los Angeles County, California, on this day personally appeared J. A. Stroud, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed

the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30th day of January, 1915.

Ida M. Greatrake

Notary Public in and for Los Angeles Co California.
(SEAL)

CERTIFICATE OF RECORD

THE STATE OF TEXAS)

COUNTY OF ECTOR) I, P. A. Higgins Clerk
of the County Court in and for said County, do hereby
certify that the foregoing Deed of Trust dated the 30th
day of Jany A. D. 1915, together with its certificates of
authentication, was filed for record in my office the 4
day of Feby A. D. 1915, at 2 o'clock P. M., and duly
recorded on the 4 day of Feby A. D. 1915, in Deed of
Trust records of Crane County, in volume 2 on page
413

WITNESS MY HAND AND OFFICIAL SEAL,
at my office in Odessa, Texas, this 4 day of Feby A.
D. 1915.

P. A. Higgins

(SEAL) Clerk, County Court, Ector County, Texas
(L. S.) By.....deputy

Endorsed:

DEED OF TRUST J. A. Stroud to Otho S. Houston
Section No. 13 East half 14 Block No. 1 Cert.
40/4753 Crane County, Tex.

Filed for Record this 4 day of Jany 1915 at 2
o'clock P. M.

P. A. Higgins

County Clerk, Ector County, Texas

VI.

That further to induce plaintiff to accept said transfer and assignment of said promissory note and said trust deed, as a consideration for the conveyance of the premises described in paragraph IV, of this complaint, said Otho S. Houston, deceitfully, falsely, and fraudulently stated and represented to said plaintiff that said land described in said trust deed and securing the payment of said promissory note was of great and substantial value, and was of such a value as to afford ample security for the payment of said note and any interest that might accrue thereon, that is to say, was worth in the aggregate the sum of between Fifteen Thousand (\$15,000.00) and Twenty Thousand (\$20,000.00) Dollars; that plenty of water suitable for the irrigation of said land for agricultural purposes was available, and that said land could be so irrigated directly from the Pecos River (the course of which lies in approximately a semi-circle around said land); that a Buena Vista Water Company, furnished water for irrigation to lands on the side of said Pecos River opposite, but adjacent to the lands described in said trust deed; that such lands on said opposite side of said Pecos River so supplied with water for irrigation purposes were selling for Sixty and Seventy-five Dollars per acre; that water could be pumped from the river directly onto this land, and thus irrigated it would be as productive, and as valuable as lands illustrated and described in a prospectus or folder purporting to illustrate and describe said Pecos River irrigated lands then and there exhibited by the said Hous-

ton to Edwin S. Crawford, who was then and there acting as agent for plaintiff and who thereafter communicated such representations to this plaintiff; that the J. A. Stroud mentioned in the trust deed hereinbefore set forth had paid to him, the said Otho S. Houston, as the first installment of the purchase price of said land, real estate then well worth Thirty-eight Hundred and Seventy-two (\$3,872.00) Dollars, and in normal times worth Four Thousand (\$4,000.00) Dollars in addition thereto giving him the promissory note secured by trust deed hereinbefore set forth and had paid the installment of interest due July 30, 1915, under the terms of said note; and that said land was well worth all that said Stroud had paid for it and that if he, the said Otho S. Houston, was then in Texas and near the land he did not know that he would have sold it at the price as aforesaid stated and represented by him to have been paid for the same by the said J. A. Stroud.

VII.

That in truth and in fact the representations in the immediately preceding paragraph of this complaint set forth as having been made by the said Otho S. Houston, were each and all absolutely untrue, deceitful, and fraudulent, as he, the said Otho S. Houston, then and there well knew, and the plaintiff did not know, and that he, the said Otho S. Houston, made the same for the purpose and with the intent of deceiving plaintiff and of defrauding plaintiff out of his said lands and tenements hereinbefore in paragraph IV of this complaint described and did deceive plaintiff to his

great injury, as hereinafter more specifically set forth; and said Otho S. Houston then and there well knew and plaintiff did not know that said land described in said trust deed and securing the payment of said promissory note was not of great and substantial value, but was of very slight and insignificant value, and was not of such value as to afford ample security for the payment of said note and any interest that might accrue thereon; but was, on the contrary, grossly insufficient as a security for the amount of said note, and was not worth in the aggregate or at all the sum of between Fifteen Thousand (\$15,000.00) Dollars and Twenty Thousand (\$20,000.00) Dollars; but was not worth to exceed One Thousand (\$1,000.00) Dollars; that it was not true that either plenty or sufficient water suitable for irrigation of said land for agricultural purposes was available in said Pecos River; on the contrary, except in times of freshets or floods, there was not sufficient water in said Pecos River for the irrigation of said lands and the water direct from said Pecos River (except possibly in times of freshets or floods) was so extremely salty and possessed of much alkali as to be totally unsuitable and unfit for irrigation for agricultural purposes; that the J. A. Stroud mentioned in the hereinbefore described trust deed had not paid to him, the said Otho S. Houston, as the first installment of the purchase price of said land, real estate then well worth thirty-eight Hundred Seventy-two (\$3,872.00) Dollars, in addition thereto giving him a promissory note secured by trust deed hereinbefore described; that on the contrary, while it was true that

the said J. A. Stroud did exchange or transfer to the said Houston, as a partial consideration for the land described in said trust deed, the following described lands:

All that certain tract or parcel of land lying and being situate in Reeves County, Texas, and being all of Section No. 269, Block No. 11, Certificate No. 1139, G. H. & S. A. Ry Co Survey, and containing 640 acres of land, said last described lands were not of the value of Three Thousand Eight Hundred and Seventy-two (\$3,872.00) Dollars or Four Thousand (\$4,000.00) Dollars, or any other sum or value exceeding the sum of Four Hundred and Eighty (\$480.00) Dollars which the said Houston then well knew, and that said J. A. Stroud paid no value whatever for said land other than the promissory note hereinbefore described and land worth not exceeding Four Hundred and Eighty (\$480.00) Dollars and that it is not true that said land was worth all or any substantial part of the pretended price the said J. A. Stroud had paid for it, but in truth and in fact was worth not to exceed in value the sum of One Thousand (\$1,000.00) Dollars, as hereinbefore set forth, and that it was not true that the said Stroud had paid the installment of interest due July 30, 1915, under the terms of said note, or that the said Stroud had paid any part thereof or any of the accrued interest on said note.

VIII.

That he (plaintiff) had long prior to the times hereinbefore mentioned in this complaint been intimately

acquainted with near relatives of the said Otho S. Houston, and had through such relationship acquired a high regard for their veracity, honesty, and fairness of dealing, and was of the belief that no member of the Houston family would deceive and defraud him and that, implicitly relying upon the said deceitful, false, and fraudulent representations, and believing the same to be true, and, being partially influenced by his said former friendly relations with the members of said Houston family, the plaintiff accepted the offer of the said Otho S. Houston, and on or about the 15th day of November, 1915, caused to be made, executed and delivered to the said Otho S. Houston by his said son-in-law, Edwin S. Crawford, and plaintiff's said daughter, Carrie R. Crawford, a deed to the premises first above described conveying the title thereto in fee to the said Otho S. Houston and thereupon let the said Otho S. Houston into possession of said premises, receiving from him as consideration therefor the promissory note and deed of trust mentioned and described in paragraph V of their complaint, together with the assignment in writing of the said Otho S. Houston thereof.

IX.

That the said deceased Otho S. Houston, died on the 8th day of May, 1917, in the County of Los Angeles, State of California, leaving a will designating the above named defendant, Elizabeth Houston as Executrix of his Estate, in which will the said Elizabeth Houston was named as the sole devisee, legatee, and beneficiary thereof; that said will was on the 19th day of June,

1917, admitted to probate in the said County of Los Angeles, and on the same date defendant Elizabeth Houston was by the Superior Court of the State of California, County of Los Angeles, appointed Executrix of the said Estate; that on the 3rd day of July, 1917, said Elizabeth Houston qualified as such Executrix, and that she has been at all times since said last mentioned date up to the present time, and now is the duly qualified and acting executrix of said Estate as aforesaid.

X.

That neither the principal of said promissory note set forth in paragraph V of this complaint nor any part thereof has been paid, and though often demanded of the said J. A. Stroud neither the accrued interest nor any part thereof has been paid, and plaintiff is informed and believes and *therefor* alleges that the said J. A. Stroud is financially irresponsible and unable to pay said interest and has no reasonable prospects of paying the principal nor any part thereof when the same shall become due, and that said note except to the extent of the value of the land conveyed in trust as security, as aforesaid, is entirely worthless and of no value, and the reasonable court costs, expenses, and attorneys fees necessary to foreclose said trust deed will amount to the sum of Three Hundred Dollars (\$300.00).

XI.

That by reason of said false, fraudulent, and deceitful representations of defendant's testator, the said Otho S. Houston, deceased, plaintiff has suffered dam-

age and injury to the extent of the difference in value between the lands and tenements described, respectively, in paragraphs IV and V of this complaint, namely, in the sum of Seven Thousand (\$7,000.00) Dollars, together with the sum of Three Hundred (\$300.00) Dollars, reasonable court costs, expenses, and attorneys fees necessary to foreclose said trust deed, and secure title to the land described in said trust deed or the value thereof at judicial sale to third person; and has been damaged in the further sum of Two Thousand Seven Hundred and Sixty (\$2,760.00) dollars rental value of the premises described in paragraph IV of this complaint from said 15th day of November, 1915, to the date of filing this complaint.

XII.

The land described in paragraph V of this complaint, securing payment of said promissory note is not easily accessible, either to plaintiff's home in Texas, or to his place of residence in California, being about 600 miles distant by rail and automobile from plaintiff's home in Texas, and an inspection of said land or an investigation of its value would have required considerable time and involved great expense; and after the assignment of said promissory note and deed of trust, as set forth in paragraph VIII hereof, until the 25th day of March, 1919, plaintiff did not have occasion to visit the locality in which said land is situated and had no opportunity to inspect the same, and from the time of said assignment until the 25th day of February, 1919, plaintiff had no notice or knowledge of any fact or thing which did or should have led him to believe

that the statements and representations of the said Otho S. Houston, deceased, set forth in paragraph VI of this complaint were not true, and during all said time plaintiff continued to rely upon said statements and representations believing them to be true; that after said 15th day of November, 1915, the said Houston and the said Stroud, continued, at the times and in the manner hereinafter more specifically set forth, with intent to further mislead, deceive, and defraud this plaintiff, and to prevent plaintiff from discovering the falsity of the representations in paragraph VI of this complaint set forth and the fraud which as aforesaid, had been practised by said Houston upon this plaintiff, with full knowledge of their falsity, to deceitfully make other untrue, false, and fraudulent representations and to do and perform other fraudulent acts calculated and tending to and which did in fact deceive plaintiff and prevent him from discovering the fraud which had as aforesaid been practised by said Houston upon him; that such false and fraudulent representations consisted of the following statements and representations in the following described letters:

First: A letter, dated the 20th day of December, 1915, signed by the said Houston, directed to this plaintiff and received by plaintiff some time during the latter part of December, 1915, in which the said Houston stated among other things that the man owning the land adjoining the land described in said trust deed would not take less than Twenty-five (\$25.00) Dollars an acre for his said land and that if he (the said Houston) lived in Texas he would like to buy the

land described in said trust deed at that price, that is to say, Twenty-five Dollars (\$25.00) per acre;

Second: What purported to be a copy of a letter dated December 20, 1915, from the said Houston to the said Stroud, which was enclosed with the letter described in the immediately preceding paragraph of this complaint, which said letter contained the following statement: "would think that you would be giving up a good proposition, as you have formerly stated in your letters to me that you thought this land would be worth \$50.00 per acre, and if you can manage to hold onto it you certainly will do well. Mr. Cowan, who owns the land next door to you, it is true, would sell his land for \$25.00 per acre, but it looks as if you might make money by holding onto it and raising the money for the interest."

Third: A letter signed by the said Houston, bearing date the 3rd day of January, 1916, and addressed to plaintiff and received by plaintiff in the early part of January, 1916, in which he (said Houston) enclosed what purported to be a part of a letter from the said Stroud asking the said Houston to get plaintiff to extend the time for payment of interest, and in which the said Stroud expressed a desire to hold onto the land;

Fourth: A letter written and signed by the said Stroud addressed to plaintiff herein and dated the 17th day of January, 1916, and received by plaintiff some time in the latter part of January, 1916, in which the said Stroud, among other things stated that he (said Stroud) could make said land sell for a hundred dollars

per acre, and that it would not cost him (Stroud) more than ten or twelve dollars per acre to do so;

Fifth: In a letter dated June 10, 1917, addressed to plaintiff herein and signed by the said Stroud in which he (Stroud) stated among other things that he was sorry he could not keep said land paid up as he believed some day it would be valuable land.

That on said 25th day of February, 1919, plaintiff was informed by persons whom he believed to be responsible and well informed that said land was grossly inadequate as a security for the payment of said promissory note, and, acting upon said information, on, to-wit, the 25th day of March, 1919, he personally visited said land and investigated its value and at that time first discovered that the statements and representations of the said Otho S. Houston, deceased, set forth in paragraph VI of this complaint were not true, but were false, fraudulent, and deceitful, as hereinbefore in paragraph VII of this complaint alleged.

Until the said discovery in March, 1919, of the great variance between the value of the said Texas land and the value as represented by said Otho S. Houston, as aforesaid, plaintiff had no reason to suspect that the first cash payment represented by Houston to have been made on said land by said Stroud was not made as represented by said Houston.

WHEREFORE, Plaintiff prays judgment against the said defendant for the sum of Ten Thousand and

WESTALL AND WALLACE
By Joseph F. Westall
and R. M. Fulton
Attorneys for Plaintiff.

J. M. Rosborough being by me first duly sworn, deposes and says: that he is the plaintiff in the above entitled action, that he has heard read the foregoing petition and knows the contents thereof; and the same is true of his own knowledge, except as to the matters which are therein stated to be upon his information or belief, and as to those matters that he believes it to be true.

Subscribed and sworn to before me this 12th day
of September, 1919.

HAZEL P. FENLON

Notary Public in and for the County of Los Angeles,
and State of California.

(ENDORSED) No. 757 Law. In the District Court of the United States in and for the Southern District of California, Southern Division. J. M. ROSBOROUGH, Complainant, vs. Elizabeth Houston, Defendant. COMPLAINT FOR DECEIT. Filed Oct. 10, 1919, CHAS. N. WILLIAMS, Clerk, by R. S. Zimmerman, Deputy Clerk. Westall and Wallace, Attorneys at Law, suite 516 Trust & Savings Bldg., Los Angeles, F5683, Attorneys for Plaintiff.

UNITED STATES OF AMERICA.

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA.

J. M. ROSBOROUGH,	}	At Law No. 757
Plaintiff,		
vs.		
ELIZABETH HOUSTON, etc		
Defendant.		

Action brought in the said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Los Angeles, County of Los Angeles, State of California.

The President of the United States of America,
Greeting:

To ELIZABETH HOUSTON, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of the said Otho S. Houston, deceased.

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the District Court of the United States, in and for the Southern District of California, Southern Division, and to file your plea, answer or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the Clerk of said Court in the City of Los Angeles, County of Los Angeles, within twenty days after the service on you of this summons, or judgment by default will be taken against you, and you are hereby notified that unless you appear and plead, answer or demur, as herein required, the plaintiff will take judgment for any money

or damages demanded in the complaint as arising from contract or will apply to the Court for any further relief demanded in the complaint.

WITNESS, the Honorable BENJAMIN F. BLEDSOE, Judge of the District Court of the United States, in and for the Southern
[SEAL] District of California, this 10th day of October, in the year of our Lord one thousand nine hundred and nineteen and of our Independence the one hundred and forty fourth.

Chas. N. Williams

Clerk.

By R. S. ZIMMERMAN

Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE, }
SOUTHERN DISTRICT OF CALIFORNIA. }

I HEREBY CERTIFY, that I received the within writ on the 13th day of October, 1919, and personally served the same on the 17th day of October, 1919, by delivering to and leaving with Elizabeth Houston, said defendant named therein, personally, at the County of Los Angeles in said District, a certified copy thereof, together with a copy of the Complaint, certified to by Chas. N. Williams attached thereto.

C. T. Walton

U. S. Marshal.

LOS ANGELES,

Oct. 17th, 1919.

By J. S. Bassett

Deputy.

[Endorsed]: Marshal's Civil Docket No. 3861. Law. No. 757 Civil U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA J. M. Rosborough, *vs.*

Elizabeth Houston, Summons Westall and Wallace
Plaintiff's Attorney Filed Nov 5 1919 Chas N Wil-
 liam Clerk By R S Zimmerman Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
 STATES SOUTHERN DISTRICT OF
 CALIFORNIA, SOUTHERN
 DIVISION.

----- o -----

J. M. Rosborough,

Plaintiff,

vs.

ELIZABETH HOUSTON, as sole
 beneficiary under the will of Otho
 S. Houston, deceased, and as Ex-
 cutrix of the Estate of the said
 Otho S. Houston, deceased,

Defendant.

At Law No. 757

----- o -----

DEMURRER

Comes now the above entitled beneficiary, Elizabeth
 Houston, as sole beneficiary under the will of Otho
 S. Houston, deceased, and as Executrix of the Estate
 of the said Otho S. Houston, deceased, and demurs
 to the complaint of the above entitled Plaintiff, on file
 herein, for:

I.

That said complaint does not state the cause of
 action as against Elizabeth Houston as sole beneficiary
 under the will of Otho S. Houston, deceased.

II.

That said complaint does not state the cause of action against Elizabeth Houston as Executrix of the Estate of the said Otho S. Houston, deceased.

III.

That there is a misjoinder of parties defendant in that there is joined, as defendants herein in an action of deceit, an action against Elizabeth Houston as sole beneficiary under the Will of Otho S. Houston, deceased, she not being privy or a party to the deceit, and an action against Elizabeth Houston as Executrix of the Estate of the said Otho S. Houston, deceased, for an alleged deceit practiced by the said Otho S. Houston.

IV.

That several causes of action have been improperly united in that there has been united therein a cause of action against Elizabeth Houston as Executrix of the Estate of Otho S. Houston, deceased, for an alleged fraud, alleged to have been perpetrated by said Otho S. Houston, and an action against Elizabeth Houston as sole beneficiary under the Will of Otho S. Houston, deceased, for alleged fraud, alleged to have been perpetrated by the said Otho S. Houston.

V.

That said complaint is ambiguous in that it cannot be determined therefrom whether the said Plaintiff, ever or at all, presented a claim against the Estate of Otho S. Houston to recover from said Estate the amount claimed to be due under said complaint.

VI.

That said complaint is uncertain for the same reason assigned as showing it to be ambiguous.

Lucius K. Chase

ATTORNEY, for Elizabeth Houston, as sole beneficiary under the Will of Otho S. Houston, deceased, and as Executrix of the Estate of the said Otho S. Houston, deceased.

[Endorsed]: No. 757 Dept.... IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION J. M. ROSBOROUGH, Plaintiff vs. ELIZABETH HOUSTON, as sole beneficiary under the Will of Otho S. Houston, deceased, and as Executrix of the Estate of the said Otho S. Houston, deceased, Defendant. DEMURRER Service of the within Demurrer admitted this 3rd day of November, 1916. Westall and Wallace by Joseph F. Westall R M Fulton attorneys for plaintiff Filed Nov 3, 1919 Chas. N. Williams, Clerk By R. S. Zimmerman Deputy Clerk. LUCIUS K. CHASE, Attorney for Defendants 441-443 Title Insurance Bldg., Los Angeles, California.

At a stated term, towit: the July, A. D. 1919 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the twenty-fourth day of November, in the year of our Lord, One thousand nine hundred and *nineteenth*;

Present: The Honorable Benjamin F. Bledsoe, District Judge.

J. M. Rosborough, Plaintiff,)	
vs.	)	757 Civil
Elizabeth Houston, etc.,)	
Defendant.)	

This cause coming on this day for hearing on defendant's demurrer to the complaint herein; Joseph F. Westall, Esq., appearing as counsel for the plaintiff; Lucius K. Chase, Esq., appearing as counsel for the defendant, and said demurrer having been argued by the respective counsel, and the Court being fully advised in the premises, now orders that said demurrer be and the same hereby is overruled and that defendant be allowed ten days to answer herein.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN -
DIVISION

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J. M. Rosborough,)
)
Plaintiff,)
)
- vs -)

ELIZABETH HOUSTON, as sole)	At Law No. 757.
beneficiary under the will of Otho)	
S. Houston, deceased, and as Ex-)	
ecutrix of the Estate of the said)	
Otho S. Houston, deceased.)	
)	
Defendant.)	

----- 0 -----

ANSWER

Comes now Elizabeth Houston, as sole beneficiary under the Will of Otho S. Houston, deceased, and as Executrix of the Estate of the said Otho S. Houston, deceased, and for answer to the complaint of the Plaintiff on file herein, alleges and denies as follows, to-wit:

I.

That she has no information or belief upon the subject sufficient to enable her to answer the same and basing her denial on that ground denies that on or prior to the 15th day of November, 1915, said Plaintiff was the owner of the following described lands and tenements:

Lot 1, Block "B", Poole and Jones Tract, in the City of Los Angeles, County of Los Angeles, and State of California, as per map recorded in Book 10, Page 194 of Maps, in the Office of the County Recorder of said County;

or that said lands or tenements then stood of record in the name of Edwin S. Crawford and Carrie B. Crawford, or in the name of Edwin S. Crawford or Carrie R. Crawford; or that they or either of them held the same in trust for Plaintiff, with or without the improvements thereon; or that at the time of the filing of said complaint, or at all times thereinbefore mentioned, said lands and tenements were worth the sum of Eight Thousand (\$8,000.00) Dollars or that the rental value thereof was Sixty (\$60.00) Dollars per month.

II.

That she has no information or belief upon the subject sufficient to enable her to answer the same and placing her denial on that ground denies that on or about the 27th day of October, 1915, the said Otho S. Houston offered to purchase the aforesaid property, or in order to induce Plaintiff to convey same to the said Otho S. Houston or otherwise, offered to transfer or assign to Plaintiff that certain promissory note, set forth in Paragraph V of said complaint; or that said note, together with endorsements thereon, so set forth, is in the words and figures as the same appears in Paragraph V of said complaint; or offered to assign or transfer to Plaintiff a certain Deed of Trust dated on the 30th day of January, 1915, securing said promissory note; or that said Deed of Trust was recorded on the 4th day of February, 1915, in Volume 2, page 413 of Deeds of Trust records of Crane County, Texas; or that said Deed of Trust is in the words and figures as set forth in paragraph V of said complaint.

III.

That she has no information or belief upon the subject sufficient to enable her to answer the same and basing her denial on that ground denies that, to induce Plaintiff to accept said transfer or assignment of said promissory note or said Trust Deed as a consideration for the conveyance of the premises in paragraph IV of said complaint, or at all, said Otho S. Houston deceitfully or falsely or fraudulently stated or represented, or stated or represented at all, to said Plaintiff, that said land described in said Trust Deed and securing

the payment of said promissory note, was of great or substantial value or was of such a value as to afford ample security for the payment of said note or any interest that might accrue thereon; or that it was worth, in the aggregate, the sum of between Fifteen Thousand (\$15,000.00) and Twenty Thousand (\$20,000.00) Dollars; or that plenty of water, suitable for the irrigation of said land for agricultural purposes, was available; or that said land could be so irrigated directly from the Pecos River; or that the course of said Pecos River lies in approximately a semi-circle around said land; or that a Buena Vista Water Company furnished water for irrigation to lands on the side of said Pecos River opposite but adjacent to the lands described in said Trust Deed; or that such lands on said opposite side of said Pecos River, so supplied with water for irrigation purposes, were selling for sixty (\$60.00) or Seventyfive (\$75.00) Dollars per acre; or that water could be pumped from the River directly onto said land; or that thus irrigated it would be as productive or as valuable as lands illustrated or described in a prospectus or folder purporting to illustrate and describe said Pecos River irrigated lands, then or there exhibited by the said Houston to Edwin S. Crawford; or that the said Edwin S. Crawford was then and there acting as agent for Plaintiff, or that he subsequently communicated such representations to Plaintiff; or that the J. A. Stroud mentioned in the Trust Deed, hereinbefore set forth, had paid to him, said Otho S. Houston, as the first installment of the purchase price of said land, real estate then well worth

Thirty-eight Hundred and Seventy-two (\$3,872.00) Dollars, or in normal times worth Four Thousand (\$4,000.00) Dollars; or, in addition thereto, giving him the promissory note secured by Trust Deed hereinbefore set forth in said complaint; or had paid the installment of interest due July 30, 1915 under the terms of said note; or that said land was well worth all that said Stroud had paid for it; or that if he, the said Otho S. Houston, was then in Texas or near the land, he did not know that he would have sold it at the price as aforesaid stated or represented to him to have been paid for the same by the said J. A. Stroud.

IV.

That she has no information or belief upon the subject sufficient to enable her to answer the same and basing her denial on that ground denies that in truth or in fact the alleged representations set forth in paragraph 6 of said complaint, as having been made by the said Otho S. Houston, or any of said alleged representations, were absolutely untrue or untrue at all, or deceitful, or fraudulent; that at such time the said Otho S. Houston knew that any of said representations were untrue or deceitful or fraudulent; that the said Plaintiff did not, at said time, know that said alleged representations were not true or that the said Otho S. Houston made the same for the purpose or with the intent of deceiving Plaintiff or of defrauding Plaintiff out of his said lands or tenements mentioned in paragraph IV of said complaint; or did deceive Plaintiff to his great injury, or at all; or that said Otho S. Houston then and there well knew, or that the said

Plaintiff did not know, that said lands described in said Trust Deed securing the payment of said promissory note was not of great or substantial value; that it was of very slight or insignificant value; or that it was not of such value as to afford ample security for the payment of said note or any interest that might accrue thereon; that, on the contrary, it was grossly insufficient as a security for amount of said note; was not worth, in the aggregate, or at all, the sum of between Fifteen Thousand (\$15,000.00) and Twenty Thousand (\$20,000.00) Dollars; or was not worth to exceed One Thousand (\$1,000.00) Dollars; it was not true that either plenty or sufficient water, suitable for irrigation of said land for agricultural purposes, was available in said Pecos River; that, on the contrary, except in times of freshets or floods, there was not sufficient water in said Pecos River for the irrigation of said lands; that the water direct from said Pecos River, except in times of freshets or floods, was so extremely salty and possessed of so much alkali as to be totally unsuitable or unfit for agricultural purposes; that the J. A. Stroud mentioned in the hereinbefore described Trust Deed had not paid to him, the said Otho S. Houston, as the first installment of the purchase price of said land, real estate then well worth Thirty-eight Hundred Seventy-two (\$3,872.00); that, on the contrary, that the said J. A. Stroud did exchange or transfer to the said Houston, as a partial consideration for the land described in the said Trust Deed, the following described lands:

All that certain tract or parcel of land lying and being situate in Reeves County, Texas, and being

all of Section No. 269, Block No. 11, Certificate No. 1139, G. H. & S. A. Ry. Co. Survey, and containing 640 acres of land;

or that said last described lands were not of the value of Thirty-eight Hundred, Seventy-two (\$3,872.00) Dollars or Four Thousand (\$4,000.00) Dollars, or any other sum or valuation exceeding the sum of Four Hundred and Eighty (\$480.00) Dollars; or that the said Otho S. Houston at said time well knew such fact; that the said J. A. Stroud paid no value whatever for the said land other than the promissory note mentioned in said complaint and said land worth not exceeding Four Hundred and Eighty (\$480.00) Dollars; that it is not true that said land was worth all or any substantial part of the pretended price of said J. A. Stroud had paid for it; or in truth or in fact was worth not to exceed in value the sum of One Thousand (\$1,000.00) Dollars; that it was not true that the said Stroud had paid the installment of interest due July 30, 1915, under the terms of said note; that it was not true that said Stroud had paid any part thereof or any of the accrued interest on said note.

V.

That she has no information or belief upon the subject sufficient to enable her to answer the same, and basing her denial on that ground denies each and all of the allegations contained in Paragraphs VIII, X, XI and XII of said Complaint;

By way of separate answer to the Complaint of plaintiff on file herein, said defendant alleges:

I.

That the cause of action alleged in said Complaint is barred by the provisions of Section 338 of the Civil Code of Procedure of the State of California;

For a further and separate defense to said cause of action set forth in said Complaint, said defendant further avers:

I.

That no claim was presented to said Executrix, or filed with the Clerk of the Superior Court of Los Angeles County, State of California, within the time allowed by law for the presentation of claims in the matter of said estate, for the payment of the money alleged in said Complaint to be due from said defendant, as Executrix of the Estate of Otho S. Houston, to said plaintiff;

For a further and separate defense to said cause of action set forth in said Complaint, said defendant further avers:

I.

That no claim was presented to said Executrix, or filed with the Clerk of the Superior Court of Los Angeles County, State of California, within the time allowed by law for the presentation of claims in the matter of said estate, to recover damages for the deceit and fraud averred in said Complaint.

Lucius K. Chase

Attorney for said defendant, Elizabeth Houston, as sole Beneficiary under the Will of Otho S. Houston, deceased, and as Executrix of the Estate of the said Otho S. Houston, deceased

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

Elizabeth Houston being by me first duly sworn, deposes and says: that, as sole beneficiary under the Will of Otho S. Houston, deceased, and as Executrix of the Estate of the said Otho S. Houston, deceased, she is the above entitled defendant; that she has read the foregoing answer and knows the contents thereof; and that the same are true of her own knowledge, except as to those matters which she has *avered* and denied upon her information and belief and as to those she believes it to be true.

Elizabeth Houston.

Subscribed and sworn to before me this 29 day of November, 1919.

Myrta J Burns

Notary Public in and for the County of Los Angeles,
 and State of California.

[Seal]

[Endorsed]: ORIGINAL No. 757. *Dept.....*
 IN THE DISTRICT COURT OF THE UNITED
 STATES SOUTHERN DISTRICT OF CALI-
 FORNIA, SOUTHERN DIVISION J. M. ROS-
 BOROUGH *Plaintiff .vs. ELIZABETH HOUS-*
TON Defendant ANSWER Service of the within
Answer admitted this 3rd day of Dec. 1919 R M
 Fulton Westall and Wallace By Joseph F. Westall
 Attorneys for plttf. Filed Dec 3 1919 Chas N. Wil-
 liams, Clerk By R S Zimmerman Deputy Clerk
 LUCIUS K. CHASE *Attorney for Defendant* 441-
 443 Title Insurance Building LOS ANGELES, CALI-
 FORNIA

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN
DIVISION

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J. M. ROSBOROUGH,)	
)	
Plaintiff,)	
)	
- vs -)	
)	
ELIZABETH HOUSTON, as sole)	At Law No. 757
beneficiary under the will of Otho)	
S. Houston, deceased, and as Ex-)	
ecutrix of the Estate of the said)	
Otho S. Houston, deceased.)	
)	
Defendant.)	
)	

-----o-----

DEMURRER TO ANSWER

Now comes the above named plaintiff and demurs to the last two sub-divisions (which both, together with a preceding sub-division are designated in said answer by the Roman numeral I) of said answer, namely to the two sub-divisions of defendant's answer beginning at line 12 and ending at line 28, page 6, both inclusive, of said answer (said pretended defenses relating to the non-presentation of a claim to the defendant Executrix) for- - -

I.

That the same does not state facts sufficient to constitute a defense or defenses to the complaint herein.

II.

That said answer is ambiguous in that it cannot be determined whether the two identically numbered paragraphs referred to relate to the same or different defenses.

III.

That said answer is unintelligible for the reason assigned showing it to be ambiguous.

IV.

That said answer is uncertain for the reason assigned showing it to be ambiguous and unintelligible.

WESTALL AND WALLACE,

By Joseph F. Westall,

Attorneys for Plaintiff.

POINTS AND AUTHORITIES UPON WHICH
THE DEMURRENT SHALL RELY

California Code of Civil Procedure, Sec. 1493;

Leverone v. Weakly, 155 Cal. 395;

Hardin v. Sinclaire, 115 Cal. 460, 463.

[Endorsed]; No. 757 At Law IN THE District Court OF THE UNITED STATES In and for the Southern District of California SOUTHERN DIVISION J. M. ROSBOROUGH *Complainant vs.* ELIZABETH HOUSTON, et al *Defendants* DEMURRER TO ANSWER *Received copy of the within* Demurrer *this 11th day of* December 1919 Lucius K Chase *Attorney for* Defendant. Filed Dec 11 1919 Chas. N. Williams. Clerk By R. S. Zimmerman Deputy Clerk Lucius K Chase *Attorney for* Defendant. WESTALL AND WALLACE ATTORNEYS AT LAW SUITE 516 TRUST & SAVINGS BLDG. LOS ANGELES F 5683 Main 8508 *Attorneys for* Plaintiff

At a stated term, towit: the July A. D. 1919, Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the twenty-second day of December, in the year of our Lord one thousand nine hundred and nineteen;

Present: The Honorable Benjamin F. Bledsoe, District Judge.

J. M. Rosborough,)	
	Plaintiff,)
vs.	)	No. 757 Civil.
Elizabeth Houston,)	
	Defendant.)

This cause coming on at this time for hearing of arguments on Demurrer to Answer; Joseph F. Westall, Esq., appearing herein as attorney for the plaintiff; and Lucius K. Chase, Esq., being present as attorney for the defendant; said demurrer having been argued by Joseph F. Westall, Esq., of Counsel as aforesaid for plaintiff, and the Court having duly considered the same, is hereby overruled.

Now, at the hour of 11:30 o'clock A. M., the Court takes a recess until the hour of 2 o'clock P. M., of this day. Thereafter, at the hour of 2 o'clock P. M., the Court reconvenes;

At a stated term, towit: the July, A. D., 1921, Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Wednesday, the nine-

teenth day of October, in the year of our Lord one thousand nine hundred and twenty-one;

Present: The Honorable Benjamin F. Bledsoe, District Judge.

J. M. Rosborough,)	
)	
Plaintiff)	
- vs -	)	No. 757 Civ.
Elizabeth Houston, etc.,)	
Defendant.)	

This cause coming on at this time for argument; J. F. Westall, Esq., appearing as counsel for the plaintiff and Lucius K. Chase, Esq., appearing as counsel for the defendant and said J. F. Westall, Esq., having presented an argument in behalf of the plaintiff and said Lucius K. Chase, Esq., having presented an argument in behalf of the defendant and said J. F. Westall, Esq., having argued in rebuttal, and now, on motion of J. F. Westall, Esq., attorney as aforesaid, it is by the court ordered that Plaintiff's Exhibit No. 1 be released to plaintiff and that said cause be submitted on briefs, and said Lucius K. Chase, Esq., having filed his brief on behalf of the defendants, it is by the court ordered that the attorney for the plaintiff be allowed ten days within which to file brief on plaintiff's behalf.

At a stated term, to-wit: the July, A. D., 1922, Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the second day of October, in the year of our Lord one thousand nine hundred and twenty-two;

Present: The Honorable Benjamin F. Bledsoe, District Judge.

J. M. Rosborough,)	
	Plaintiff)
vs.	)	No. 757 Civil.
Elizabeth Houston, etc.,)	
Defendant.)	

In this cause at this time the court hands down its Opinion and orders the same filed and thereupon instructs counsel for the plaintiff to prepare findings in accordance therewith giving judgment in favor of plaintiff herein for \$10,060.00

At a stated term, to-wit: the July Term, A. D. 1922 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the seventeenth day of October, in the year of our Lord one thousand nine hundred and twenty-two;

Present: The Honorable Benjamin F. Bledsoe, District Judge.

J. M. Rosborough,)	
	Plaintiff)
vs.	)	No. 757 Civil.
Elizabeth Houston, etc.,)	
Defendant.)	

This cause having heretofore been submitted to the court for its consideration and decision and the court having thereafter handed down its opinion and instructed counsel for the plaintiff to prepare Findings and in accordance therewith Findings of Fact and Conclusions of Law having been presented to the court and

by the court signed and ordered filed herein, and judgment pursuant thereto having thereupon been presented to the court for signature, said judgment is thereupon signed by the court and ordered filed and entered herein.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN
DIVISION

J. M. Rosborough,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ELIZABETH HOUSTON, as sole	)	At Law No. 757
beneficiary under the will of Otho)	
S. Houston, deceased, and as Ex-)	
ecutrix of the Estate of the said)	
Otho S. Houston, deceased,)	
)	
Defendant.)	

NOTICE OF PRESENTATION OF FINDINGS

To the above-named defendant, Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, *an* as Executrix, etc., and to Lucius K. Chase, No. 441-443 Title Insurance Building, Los Angeles, California, her attorney:

You will please take notice, that the court has directed the plaintiff to prepare findings in the above-entitled action, and that in accordance with said direction the said plaintiff has prepared findings therein, and

herewith serves upon you a copy of said proposed findings.

And you are further notified that said proposed findings will be presented to the said court to be signed five days after this service of a copy of the same upon you.

Dated this 11th day of October, 1922.

Robert M. Fulton and
WESTALL AND WALLACE

By Joseph F Westall

Attorneys for plaintiff.

Receipt of a copy of the above notice, and of plaintiff's proposed findings, referred to therein, is hereby admitted this 11 day of October, 1922.

Lucius K Chase

Attorney for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN
DIVISION

At Law No. 757

J. M. ROSBOROUGH,

Plaintiff,

vs.

ELIZABETH HOUSTON, as sole
beneficiary under the will of Otho
S. Houston, deceased, and as Ex-
ecutrix of the Estate of said Otho
S. Houston, deceased,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action came on for trial on the 19th day of September, 1921, and having been tried before the Court (a jury trial having been waived) on the 19th and 20th days of September, 1921, Joseph F. Westall, Esq., of the firm of Westall and Wallace, appearing for plaintiff, and Lucius K. Chase, Esq., for defendant, and after hearing the allegations and proofs of the parties, and the arguments of counsel, and being advised in the premises, I hereby make and file the following findings of facts and conclusions of law constituting my decision in said action:

FINDINGS OF FACT

I.

That on and prior to the 15th day of November, 1915, plaintiff was the owner of the following described lands and tenements:

Lot 1, block "B", Poole and Jones Tract, in the City of Los Angeles, County of Los Angeles, and State of California, as per map recorded in Book 10, Page 194 of Maps, in the Office of the County Recorder of said County,

which said lands and tenements then stood of record in the name of Edwin S. Crawford and Carrie R. Crawford, respectively, the son-in-law and daughter of plaintiff, who held the same in trust for plaintiff, together with all improvements thereon, and which, at the time of the filing of this complaint and at all times hereinbefore mentioned, were worth, to-wit, the sum

of Eight Thousand (\$8,000.00) Dollars, and the rental value of which was sixty (\$60) Dollars per month.

II.

That on or about the 27th day of October, 1915, defendant's testator, Otho S. Houston, offered to purchase the premises described in paragraph I of these findings, and in order to induce plaintiff to convey same to said Otho S. Houston, as a partial consideration for such conveyance, offered to transfer or assign to plaintiff a certain promissory note, dated at Los Angeles, California, January 30, 1915, promising to pay to the said Otho S. Houston, or order, ten years after date the sum of Nine Thousand Nine Hundred and Four (\$9,904.00) Dollars, with interest thereon from date until paid at the rate of six per cent. per annum, interest payable semi-annually at Ft. Worth, Texas, all as more particularly set forth in paragraph V of the complaint in this cause; and also, as a further consideration for such conveyance, offered to assign and transfer to plaintiff a certain deed of trust, dated the 30th day of January, 1915, purporting to secure payment of said promissory note, last above described, which said Trust Deed is also more fully described and set forth in said complaint.

III.

That further to induce plaintiff to accept said transfer and assignment of said promissory note and trust deed, as a consideration for the conveyance of the premises described in paragraph I of these findings, said Otho S. Houston deceitfully, falsely, and fraudulently stated and represented to said plaintiff that said

land described in said trust deed and purporting to secure the payment of said promissory note was of great and substantial value, and was of such a value as to afford ample security for the payment of said note and any interest that might accrue thereon, that is to say, was worth in the aggregate the sum of between Fifteen Thousand (\$15,000.00) and Twenty Thousand (\$20,000.00) Dollars; that plenty of water suitable for irrigation of said land for agricultural purposes was available, and that said land could be so irrigated directly from the Pecos River (the course of which lies in approximately a semi-circle around said land); that a Buena Vista Water Company, furnished water for irrigation to lands on the side of said Pecos River opposite, but adjacent to the lands described in said trust deed; that such lands on said adjacent opposite side of said Pecos River so supplied with water for irrigation purposes were selling for Sixty and Seventy-five Dollars per acre; that water could be pumped from the river directly onto said land described in said plaintiff in this behalf laid out and expended to be taxed by the Clerk of this Court at the sum of \$57.48 and that execution against said Elizabeth Houston trust deed, and thus irrigated it would be as productive, and as valuable as lands illustrated and described in a prospectus or folder purporting to illustrate and describe said adjacent Pecos River irrigated lands then and there exhibited by the said Houston to Edwin S. Crawford, who was then and there acting as agent for plaintiff and who thereafter communicated such representations to this plaintiff; that the J. A. Stroud

mentioned in the trust deed hereinbefore set forth had paid to him, the said Otho S. Houston, as the first installment of the purchase price of said land described in said trust deed, real estate then well worth Thirty-eight Hundred and Seventy-two (\$3,872.00) Dollars, and in normal times worth Four Thousand (\$4,000.00) Dollars in addition thereto giving him the promissory note secured by trust deed hereinbefore mentioned and described and had paid the installment of interest due July 30, 1915, under the terms of said note; and that said land was well worth all that said Stroud had paid for it and that if he, the said Otho S. Houston, was then in Texas and near the land he would not have sold it at the price as aforesaid stated and represented by him to have been paid for the same by the said J. A. Stroud.

IV.

That such representations in the immediately preceding paragraph of these findings set forth as having been made by the said Otho S. Houston, were each and all absolutely untrue, deceitful, and fraudulent, as he, the said Otho S. Houston, then and there well knew, and the plaintiff did not know, and that he, the said Otho S. Houston, made the same for the purpose and with the intent of deceiving plaintiff and of defrauding plaintiff out of his said lands and tenements hereinbefore in paragraph I of these findings described and did deceive plaintiff to his great injury, as hereinafter more specifically set forth; and said Otho S. Houston then and there well knew and plaintiff did not know that said land described in said trust deed and securing

the payment of said promissory note was not of great and substantial value, but was of very slight and insignificant value, and was not of such value as to afford ample security for the payment of said note and any interest that might accrue thereon; but was, on the contrary, grossly insufficient as a security for the amount of said note, and was not worth in the aggregate or at all the sum of between Fifteen Thousand (\$15,000.00) Dollars and Twenty Thousand (\$20,000.00) Dollars; but was not worth to exceed One Thousand (\$1,000.00) Dollars; that it was not true that either plenty or sufficient water suitable for irrigation of said land for agricultural purposes was available in said Pecos River; on the contrary, except in times of freshets or floods, there was not sufficient water in said Pecos River for the irrigation of said lands and the water in said Pecos River (except possibly in times of freshets or floods) was so extremely salty and possessed of so much alkali as to be totally unsuitable and unfit for irrigation or for agricultural purposes; that the J. A. Stroud mentioned in the hereinbefore described trust deed had not paid to him, the said Otho S. Houston, as the first installment of the purchase price of said land, real estate then well worth thirty-eight Hundred Seventy-two (\$3,872.00) Dollars, in addition thereto giving him a promissory note secured by trust deed hereinbefore described; that on the contrary, while it was true that the said J. A. Stroud did exchange or transfer to the said Houston, as a partial consideration for the land described in said trust deed, the following described lands:

All that certain tract or parcel of land lying and being situate in Reeves County, Texas, and being all of Section No. 269, Block No. 11, Certificate No. 1139, G. H. & S. A. Ry. Co. Survey, and containing 640 acres of land, said last described lands were not of the value of Three Thousand and Eight Hundred and Seventy-two (\$3,872.00) Dollars or Four Thousand (\$4,000.00) Dollars, or any other sum or value exceeding the sum of Four Hundred and Eighty (\$480.00) Dollars which the said Houston then well knew, and that said J. A. Stroud paid no value whatever for said land other than the promissory note hereinbefore described and land worth not exceeding Four Hundred and Eighty (\$480.00) Dollars and that it is not true that said land was worth all or any substantial part of the pretended price the said J. A. Stroud had paid for it, but in truth and in fact was worth not to exceed in value the sum of One Thousand (\$1,000.00) Dollars, as hereinbefore set forth, and that it was not true that the said Stroud had paid the installment of interest due July 30, 1915, under the terms of said note, or that the said Stroud had paid any part thereof or any of the accrued interest on said note.

V.

That the transaction at which the J. A. Stroud signed said promissory note and said trust deed set forth and described in paragraph V of the complaint in this action, was not a bona fide transaction between the said Otho S. Houston and the said J. A. Stroud, but on the contrary, was purely a fictitious transaction, and said

promissory note and trust deed were deceitful and fraudulent instruments or devices, by which the said Otho S. Houston, knowingly, willfully, deceitfully, and fraudulently intended and designed to cheat and defraud whoever could be induced to give value for them, and were designed and intended to cheat and defraud plaintiff in this action.

VI.

That plaintiff, long prior to any of the transactions referred to in the preceding paragraphs of these findings had been intimately acquainted with near relatives of the said Otho S. Houston, and had through such relationship acquired a high regard for their veracity, honesty, and fairness of dealing, and was of the belief that no member of the Houston family would deceive and defraud him and that, implicitly relying upon the said deceitful, false, and fraudulent representations, and believing the same to be true, and, being partially influenced by his said former friendly relations with the members of said Houston family, the plaintiff accepted the offer of the said Otho S. Houston, and on or about the 15th day of November, 1915, caused to be made, executed and delivered to the said Otho S. Houston by his said son-in-law, Edwin S. Crawford, and plaintiff's said daughter, Carrie R. Crawford, a deed to the premises described in paragraph I of these findings conveying the title thereto in fee to the said Otho S. Houston and thereupon let the said Otho S. Houston into possession of said premises, receiving from him as consideration therefor the promissory note and deed of trust mentioned and described in paragraph II of

the findings, together with the assignment in writing of the said Otho S. Houston thereof.

VII.

That while the plaintiff made a partial and rather cursory attempt to examine the Texas land, purporting to secure said promissory note, (being the land mentioned in said trust deed) he did no more than to make an unsuccessful attempt because of the said representations, false in character, made by defendant's testator.

VIII.

That neither the principal of said promissory note, mentioned and described in paragraph II of these findings, nor any part thereof has been paid, and though often demanded of said J. A. Stroud, neither the accrued interest, nor any part thereof has been paid, and that the said J. A. Stroud is financially irresponsible and unable to pay such interest, and has no reasonable prospects of being able to pay either principal or any part thereof or interest when the same shall become due, and has no property, real or personal, out of which any judgment for principal or interest of said note could be satisfied; and that said note, except to the extent of the value of the land conveyed in trust as security, as aforesaid, is entirely worthless and of no value, and any deficiency judgement that might be rendered in any foreclosure proceedings against the said J. A. Stroud looking toward the collection of principal and interest of said note would be uncollectible and worthless.

IX.

That the reasonable expenses, including court costs, miscellaneous expenses, and attorneys fees necessary to foreclose said trust deed and to secure title to the land described in said trust deed, mentioned in paragraph II of these findings, or the value thereof at judicial sale is Three Hundred (\$300.00) Dollars.

X.

That the land mentioned in said trust deed, purporting to secure payment of said promissory note both mentioned in paragraph II of these findings, is not easily accessible, either to plaintiff's home in Texas, or to his place of residence in California, being about 600 miles distant by rail and automobile from plaintiff's home in Texas, and an inspection of said land or an investigation of its value would have required considerable time and involved great expense; and after the assignment of said promissory note and deed of trust, as set forth in paragraph VI hereof, until the 25th day of March, 1919, plaintiff did not have occasion to visit the locality in which said land is situated and had no opportunity to inspect the same, and from the time of said assignment until the 25th day of February, 1919, plaintiff had no notice or knowledge of any fact or thing which did or should have led him to believe that the statements and representations of the said Otho S. Houston, deceased, set forth in paragraph II of these findings were not true, and during all said time plaintiff continued to rely upon said statements and representations believing them to be true; that after said 15th day of November, 1915, the said

Houston and the said Stroud, continued, at the times and in the manner more specifically set forth, in paragraph XII of the complaint herein, with intent to further mislead, deceive, and defraud this plaintiff, and to prevent plaintiff from discovering the falsity of the representations in paragraph III of these findings set forth and the fraud which as aforesaid, had been practiced by said Houston upon said plaintiff, with full knowledge of their falsity, to deceitfully make other untrue, false, and fraudulent representations and to do and perform other fraudulent acts calculated and tending to and which did in fact deceive plaintiff and prevent him from discovering the fraud which had as aforesaid been practiced by said Houston upon him.

XI.

That on the 25th day of February, 1919, plaintiff was informed by persons whom he believed to be responsible and well informed that said land was grossly inadequate as a security for the payment of said promissory note, and, acting upon said information, on, to-wit, the 25th day of March, 1919, he personally visited said land and investigated its value and at that time first discovered that the statements and representations of the said Otho S. Houston, deceased, set forth in paragraph III of these findings were not true, but were false, fraudulent, and deceitful, as hereinbefore found.

That until the said discovery in March, 1919, of the great variance between the value of the said Texas land and the value as represented by said Otho S. Houston, as aforesaid, plaintiff had no reason to

suspect that the first cash payment represented by Houston to have been made on said land by said Stroud was not made as represented by said Houston.

XII.

That all the allegations of the complaint are true, and all of the allegations of the answer in denial thereof are not true.

XIII.

That the land mentioned in said trust deed purporting to secure payment of said promissory note mentioned in paragraph II of these findings is situated in a part of the country which has habitually very little rain and the freshets and floods referred to in paragraph IV of these findings are unusual and rare and for all practical purposes the water from the Pecos River, except on such rare and unusual occasions, cannot be used for irrigation or agricultural purposes.

XIV.

That the difference in value between the lands and tenements described in paragraph I of these findings and the promissory note and its security mentioned and described in paragraph II of these findings is Seven Thousand (\$7,000.00) Dollars.

XV.

That it has not been proven as alleged in the third subdivision of paragraph V of defendant's answer herein that no claim was presented to said executrix or filed with the Clerk of the Superior Court of Los Angeles County, State of California, within the time alleged in said answer to be allowed by law for the presentation of claims in the matter of said estate for

the payment of the money alleged in said complaint to be due from said defendant as executrix of the estate of Otho S. Houston, deceased to said plaintiff.

XVI.

That it has not been proven as alleged in the fourth subdivision of paragraph V of defendant's answer herein that no claim was presented to said executrix or filed with the Clerk of the Superior Court of Los Angeles County, State of California, within the time alleged in said answer to be allowed by law for the presentation of claims in the matter of said estate to recover damages for the deceit and fraud averred in said complaint.

CONCLUSIONS OF LAW.

I.

That defendants testator was guilty of fraud in the transaction complained of in the complaint filed herein.

II.

That such fraud and the circumstances incident to it (resulting in the injury to plaintiff complained of) constitutes proper grounds for this action at law for deceit.

III.

That this action survives against defendant as executrix of the estate of said Otho S. Houston, deceased.

IV.

That the cause of action set forth in the complaint is not barred by the provisions of any statute of limitations of the State of California; and particularly is not barred by the provisions of Section 338 of the Code of Civil Procedure of the State of California.

V.

That by reason of said false, fraudulent, and deceitful representations of defendant's testator, the said Otho S. Houston, during his lifetime, plaintiff has suffered damage and injury to the extent of the difference in value between the lands and tenements described in paragraph I of these findings and the promissory note and its security mentioned and described in said paragraph II of these findings, (which difference in value I have found to be the sum of seven thousand dollars (\$7,000.00) together with the sum of Three Hundred (\$300.00) Dollars, reasonable court costs, expenses, and attorneys fees necessary to foreclose said trust deed, and secure title to the land described in said trust deed or the value thereof at judicial sale to third person; and has been damaged in the further sum of Two Thousand Seven Hundred and Sixty (\$2,760.00) Dollars rental value of the premises described in paragraph I of these findings from said 15th day of November, 1915, to the date of filing this complaint; all and each of which separate amounts aggregate the sum of Ten Thousand and Sixty (\$10,060.00) Dollars.

VI.

That neither said sum of Ten Thousand and Sixty (\$10,060.00) Dollars nor any part thereof has been paid.

VII.

That judgment in the sum of Ten Thousand and Sixty (\$10,060.00) Dollars should be rendered in favor of plaintiff and against defendant as executrix of the estate of the said Otho S. Houston, deceased, to be paid in due course of administration.

VIII.

That judgment for plaintiffs costs to be taxed should be rendered against said Elizabeth Houston, individually, and not as said executrix and that execution should issue therefor.

DATED this 17th day of October, 1922.

Benjamin F. Bledsoe
U. S. District Judge.

[Endorsed]: No. 757 AT LAW IN THE DISTRICT COURT OF THE UNITED STATES In and for the Southern District of California SOUTHERN DIVISION J. M. ROSBOROUGH Complainant vs. ELIZABETH HOUSTON Defendant FINDINGS OF FACT AND CONCLUSIONS OF LAW and NOTICE OF THE PRESENTATION THEREOF. Filed Oct 17 1922 Chas. N. Williams, Clerk Edmund L. Smith, Deputy R. M. FULTON and WESTALL and WALLACE ATTORNEYS AT LAW SUITE 516 TRUST & SAVINGS BLDG. LOS ANGELES Phone 65683 Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN
DIVISION

J. M. ROSBOROUGH,)
Plaintiff,)
vs.)
ELIZABETH HOUSTON, as sole)
beneficiary under the will of Otho) AT LAW No. 757
S. Houston, deceased, and as Ex-)
ecutrix of the Estate of said Otho)
S. Houston, deceased,)
Defendant.

JUDGMENT

This cause came on regularly for trial before the court without a jury (a jury having been waived by the parties hereto) on the 19th day of September, 1921, and Messrs. Joseph F. Westall and R. M. Fulton, appearing for plaintiff and Lucius K. Chase, appearing for defendant, and after hearing the evidence adduced on behalf of both parties plaintiff and defendant, the evidence being closed, and arguments of counsel heard, the cause was submitted to the Court for consideration and decision; and after due deliberation thereon the court delivered its findings and decision in writing, which have been filed, and ordered that judgment be entered in accordance therewith;

Whereupon, by reason of the law and findings aforesaid, it is ordered and adjudged that plaintiff do have and recover of and from the defendant the sum of Ten Thousand and Sixty (\$10,060.00); that said claim set forth in the complaint be and the same is hereby allowed as a claim against said estate, and that the same be paid in due course of administration by said defendant;

It is further ordered and adjudged that plaintiff have and recover of and from the defendant individually and not as executrix of said estate, the costs of this plaintiff in this behalf laid out and expended to be taxed by the Clerk of this Court at the sum of \$57.48 and that execution against said Elizabeth Houston issue therefor.

Judgment Rendered this 17 day of October, 1922.

Benjamin F. Bledsoe

United States District Judge.

[Endorsed]: No. 757 AT LAW IN THE DISTRICT
Court OF THE UNITED STATES In and for the South-
ern District of California SOUTHERN DIVISION J. M.
ROSBOROUGH Complainant vs. ELIZABETH
HOUSTON, etc Defendant JUDGMENT FILED
Oct 17 1922 Chas. N. Williams, Clerk by Edmund
L. Smith R. M. FULTON WESTALL AND WAL-
LACE ATTORNEYS AT LAW SUITE 516 TRUST & SAV-
INGS BLDG. LOS ANGELES Phone 65683 Attorneys for
Plaintiff Judg B 3/12/3

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA.
SOUTHERN DIVISION.

J. M. ROSBOROUGH,)
Plaintiff,)
- vs -)
ELIZABETH HOUSTON, as sole)
beneficiary under the will of Otho) NO. 757 Civil.
S. Houston, deceased, and as Ex-)
ecutrix of the Estate of the said)
Otho S. Houston, deceased,)
Defendant.

I, Chas N. Williams, Clerk of the District Court of
the United States for the Southern District of Cali-
fornia, do hereby certify the foregoing to be a full,
true and correct copy of an original JUDGMENT en-
tered in the above-entitled action, and recorded in

JUDGMENT BOOK NO. 3 for the Southern Division at Page 124 thereof; and I do further certify that the papers hereto, constitute the JUDGMENT ROLL in said action.

Attest my hand and the seal of said District Court, this 27th day of October, A. D., 1922.

Chas. N. Williams, Clerk,
By Edmund L. Smith

[Seal] Deputy Clerk.

[Endorsed]: No. 757 Civil. In the District Court OF THE UNITED STATES for the Southern District of California Southern Division. J. M. Rosborough, vs. Elizabeth Houston, etc. JUDGMENT ROLL. Filed Oct. 27-, 1922 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith Deputy Clerk Recorded Judgment Book No. 3 Page 123

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN
DIVISION

J. M. ROSBOROUGH,)
)
Plaintiff)
)
- vs -)
) AT LAW No. 757
ELIZABETH HOUSTON, AS) ASSIGNMENT
SOLE Beneficiary under the Will) OF ERRORS.
of Otho S. Houston, deceased, and)
as Executrix of the Estate of Otho)
S. Houston, deceased.)
)
Defendant.)

Now comes the above entitled defendant, Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of said Otho S. Houston, deceased, and files the following assignment of errors upon which she will rely upon her prosecution of her appeal in the above entitled cause through writ of error, from the judgment made by this Honorable Court on the 17th day of October, 1922.

I.

That the said United States District Court for the Southern District of California, Southern Division, erred in overruling the demurrer interposed by the defendant and appellant to the original complaint filed in the cause.

II.

Said Court also erred in rendering judgment against Elizabeth Houston, as Executrix of the Estate of Otho S. Houston, deceased, for the reason that the special findings made and filed herein by the Court do not support such judgment.

III.

Said Court also erred in rendering judgment against Elizabeth Houston, as an individual, for the reason that the special findings made and filed herein by the Court do not support such judgment.

IV.

Said Court erred in *rendering* judgment against Elizabeth Houston, as executrix of the Estate of Otho S. Houston, deceased, and also erred in rendering judgment against Elizabeth Houston, individually, for that the special findings of fact made by said Court

do not support said judgment or any portion thereof, for that the special findings of fact filed herein affirmatively show that the cause of action in favor of plaintiff lapsed with, and did not survive the death of Otho S. Houston.

V.

Said Court erred in rendering judgment against Elizabeth Houston, as executrix of the Estate of Otho S. Houston, deceased, and also erred in rendering judgment against Elizabeth Houston, individually, for that the special findings of fact made by said Court do not support said judgment or any portion thereof, for that no affirmative finding was made that a claim had been filed against the estate of Otho S. Houston, deceased, prior to the institution of this action.

VI.

Said Court erred in rendering judgment against Elizabeth Houston, as Executrix of the Estate of Otho S. Houston, deceased, and also erred in rendering judgment against Elizabeth Houston, individually, for that the special findings of fact made by said Court do not support said judgment or any portion thereof, for that the special findings of fact made and filed herein by said Court show that plaintiff Rosborough made an independent investigation of the lands before the trade was consummated, and hence cannot be said to have relied on the fraud charged.

VII.

Said Court erred in rendering judgment against Elizabeth Houston, as executrix of the Estate of Otho S. Houston, deceased, in that it affirmatively appears

from the said findings that to the extent of Twenty-seven Hundred Dollars (\$2700.00) thereof the judgment is excessive in that in an action at law to recover damages for fraudulent misrepresentations inducing the trade of real estate, said judgment to the extent of Twenty-seven Hundred Dollars (\$2700.00) consisted of the rental value of plaintiff's demised premises from November 15, 1915, the date of the transfer of plaintiff's property to Otho S. Houston, to the date suit was filed herein by said plaintiff.

VIII.

The Court erred in rendering that portion of the judgment rendered against Elizabeth Houston as an individual for the reason that neither the facts alleged in said complaint filed herein, nor the findings of fact filed herein, show or state a cause of action in favor of plaintiff against said Elizabeth Houston as an individual.

IX.

The Court erred in rendering that portion of the judgment rendered against Elizabeth Houston, as Executrix of the Estate of Otho S. Houston, deceased, for the reason that neither the facts alleged in said complaint filed herein, nor the findings of fact filed herein, show or state a cause of action in favor of plaintiff against said Elizabeth Houston, as Executrix of the Estate of Otho S. Houston, deceased.

WHEREFORE, Appellant prays that said judgment be reversed and that said District Court of the United States, for the Southern District of California,

Southern Division, be ordered to enter a judgment reversing the decision of the lower Court in said cause.

Lucius K. Chase
Attorney for Defendant and Appellant.

[Endorsed]: Original AT LAW No. 757 Dept...
IN THE DISTRICT COURT of the United States
Southern District OF CALIFORNIA Southern
Division. J. M. ROSBOROUGH Plaintiff vs. ELIZA-
BETH HOUSTON, as sole beneficiary under the
Will of Otho S. Houston, deceased, and as Ex-
ecutrix of the Estate of Otho S. Houston, Dec'd.
Defendant ASSIGNMENT OF ERRORS Filed Apr
10 1923 Chas N Williams, Clerk By R S. Zimmer-
man Deputy Clerk LUCIUS K. CHASE Attorney
for Defendant 442-444 Title Insurance Building LOS
ANGELES, CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN
DIVISION.

J. M. Roseborough,)	
	Plaintiff,)
vs.	)	Civil 757
Elizabeth Houston, etc.,)	
	Defendant.)

Messrs. Robert M Fulton, and Westall & Wallace of
Los Angeles, Cal., Attorneys for Plaintiff.

Lucius K. Chase, Esq., of Los Angeles, Cal., Attor-
ney for Defendant.

MEMORANDUM OPINION.

Bledsoe, District Judge:—In this case, I have given
very attentive consideration to the points involved. As

I indicated from the bench at the oral argument, there is no doubt in my mind but that the defendant's testator was guilty of the grievous fraud alleged. A study of the entire transaction, from its very inception to its consummation, indicates a fraudulent intent and purpose. The securing of the promissory note and trust deed subsequently delivered to the plaintiff, was itself a fraud and serves to demonstrate in clearest fashion that the entire transaction was actuated by the same motives.

The plaintiff made a partial and rather cursory examination of the property involved but I am persuaded that he did no more than he actually did because of the representations, false in character, made by defendant's testator. In that wise, I am confident that he relied to his discomfiture upon those representations and that he should not now be denied relief because of the fact that, acting upon such representations, he did not investigate further and ascertain the very material fact, not apparent from surface indications, that the water apparently available for the irrigation of the soil, was so saline in character that it could not be used thereon.

The plea of the statute of limitations, in my judgment, is not well taken. The plaintiff did not buy the land and had no present interest in the land. In consequence, it was not his duty to go upon the land. He merely bought a promissory note, the payment of which was secured by a mortgage or trust deed upon the land and there was no occasion for him to inquire into the availability or acceptability of the land until the time came for him to foreclose upon his security.

At that time, he did make the discovery as to the worthlessness of his security and from then on he acted with all requisite promptitude.

The point is urged again that the action may not be maintained against the Executrix of Houston. I find nothing in the statutes of California denying the right of a plaintiff in such a case to proceed against the Executrix. The property actually obtained by the fraud of the deceased or its fruits having come into the hands of the Executrix now serves to enrich the estate in her hands. Right and justice would seem to demand that such an unlawful enrichment should not be permitted and that the value of the thing wrongfully acquired and wrongfully retained should be recoverable. No statutory inhibition existing, I am persuaded that the rule of the common law is to be followed. From a careful reading of the case of *Hambly v. Trott*, 1 Cowp. 371, which is very illuminating in its reasoning, I understand the rule to be at common law, that the party defrauded may seek relief as for the value of the thing obtained even as against the executor. Here, as the result of the fraud, the estate of the deceased has been enriched and the effort merely is to obtain that which has thus been wrongfully secured and retained. See also to same effect, 1 C. J. 174.

The property of the plaintiff wrongfully obtained by defendant's testator was reasonably worth eight thousand dollars. The rental value of the same amounted to sixty dollars per month. In view of these facts, the plaintiff will take judgment as prayed for in the sum of \$10,060.00.

Plaintiff's counsel will prepare and present findings.
October 2, 1922.

[Endorsed]: No. 757 Civ. IN THE District
COURT OF THE UNITED STATES FOR THE
Southern District of California J. M. Roseborough vs.
Elizabeth Houston etc. Memorandum Opinion. FILED
OCT 2 1922 CHAS. N. WILLIAMS, Clerk By
Edmund L. Smith Deputy.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN
DIVISION

J. M. ROSBOROUGH)

Plaintiff)

- vs -

) AT LAW No. 757
PETITION FOR
WRIT OF
ERROR

ELIZABETH HOUSTON, as sole)
beneficiary under the will of Otho)
S. Houston, deceased, and as Ex-)
ecutrix of the Estate of Otho S.)
Houston, deceased,)

Defendant.)

And now comes the defendant herein, ELIZABETH
HOUSTON, as sole beneficiary under the will of Otho
S. Houston, deceased, and as Executrix of the Estate
of Otho S. Houston, deceased, and says that on the
17th day of October, 1922, this court entered judgment
herein in favor of the plaintiff and against this defend-
ant, in which judgment and the proceedings had prior

thereunto in this cause certain errors were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE this defendant prays that a writ of error may issue in this behalf to the United States Circuit Court of Appeals for the Ninth District, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said circuit court of appeals.

Lucius K. Chase

Attorney for Defendant, Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased.

WRIT OF ERROR allowed upon defendant giving bond for security for costs in the sum of \$250.00

Bledsoe
Judge.

[Endorsed]: AT LAW No. 757 Dept.....
IN THE United States COURT Southern District of CALIFORNIA Southern Division J. M. ROSBOROUGH plaintiff vs. ELIZABETH HOUSTON, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, dec'd Defendant PETITION FOR WRIT OF ERROR Filed Apr 10 1923 Chas. N. Williams, Clerk By R S Zimmerman Deputy Clerk LUCIUS K. CHASE Attorney for Defendant. 442-444 Title Insurance Building LOS ANGELES, CALIFORNIA

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN
DIVISION

J. M. ROSBOROUGH)

Plaintiff)

- vs -

(AT LAW No. 757

ELIZABETH HOUSTON, as sole)
beneficiary under the will of Otho)
S. Houston, deceased, and as Ex-)
ecutrix of the Estate of Otho S.)
Houston, deceased,)

BOND ON
WRIT OF
ERROR.

Defendant.)

- - - - -

KNOW ALL MEN BY THESE PRESENTS, that I, ELIZABETH HOUSTON, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased, as principal, and Fred H. Richman and Sam Houston as sureties, are jointly and severally held and firmly bound unto the plaintiff, J. M. Rosborough in the full and just sum of Two Hundred Fifty Dollars (\$250.00) to be paid to the said plaintiff, J. M. ROSBOROUGH, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 11th day of April, in the year of our Lord one thousand nine hundred and twenty-three.

WHEREAS, lately at a district court of the United States, Southern District of California, Southern Division, in a suit depending in said court, between J. M. Rosborough, plaintiff, and Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased, defendant, a judgment was rendered against the said Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased, and the said Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said J. M. Rosborough citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, California, in said circuit, on the 9th day of May next.

Now, the condition of the above obligation is such, that if the said Elizabeth Houston, as sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased, shall prosecute said writ of error to effect and answer all costs if she fails to make the said plea good, then

the above obligation to be void, else to remain in full force and virtue.

Elizabeth Houston Smith

formally—Elizabeth Houston

As sole beneficiary under the will of Otho S. Houston, deceased, and as Executrix of the Estate of Otho S. Houston, deceased.

Fred H Richman

Sam Houston

Sealed and delivered in presence of

Lucius K. Chase

M. M. Thompson

as to Sam Houston

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

Fred H Richman and.....being duly sworn, each for himself, says: That he is one of the sureties named in the above bond; that he is a resident and freeholder within said district, and is worth the said sum of Two Hundred Fifty Dollars (\$250.00) over and above all his debts and liabilities, exclusive of property exempt from execution.

Fred H Richman

Subscribed and sworn to before me this 11 day of April, 1923.

[Seal]

J. E. Johnson

Notary Public in and for the County of Los Angeles,
State of California.

Sam Houston, being duly sworn, says: That he is one of the sureties named in the above bond; that he is a resident and free-holder within said district, and is worth the said sum of Two Hundred Fifty Dollars (\$250.00) over and above all his debts and liabilities, exclusive of property exempt from execution.

Subscribed and sworn to before me this 14th day of
April, 1923.

Anna S Lewis

Notary Public in and for the County of Los Angeles,
State of California.

Examined and recommended for approval, as provided in Rule 29.

Lucius K. Chase
Attorney

I hereby approve the foregoing bond.

Bledsoe

United States Judge for the Southern District of California, Southern Division.

4/14/23

[Endorsed]: AT LAW No. 757 Dept.....
IN THE DISTRICT COURT of the United States
Southern District OF CALIFORNIA Southern Di-
vision J. M. ROSBOROUGH *Plaintiff vs.* ELIZA-
BETH HOUSTON, as sole beneficiary under the Will
of Otho S. Houston, deceased, and as Executrix of
the Estate of Otho S. Houston, Deceased *Defendant*
BOND ON WRIT OF ERROR Filed Apr 16 1923

Chas. N. Williams, Clerk By W. J. Tufts, Deputy
 Clerk LUCIUS K. CHASE *Attorney for* Defendant.
 442-444 Title Insurance Building LOS ANGELES,
 CALIFORNIA

UNITED STATES OF AMERICA DISTRICT
 COURT OF THE UNITED STATES
 SOUTHERN DISTRICT OF
 CALIFORNIA

J. M. ROSBOROUGH,)	
	Plaintiff	) CLERK'S OFFICE
- vs -)	
ELIZABETH HOUSTON, as)	
sole beneficiary under the will of)	
Otho S. Houston, deceased, and	)	No. 757 - At Law
as Executrix of the Estate of)	
Otho S. Houston, deceased,)	
Defendant.	)	PRAECIPE

TO THE CLERK OF SAID COURT:

Sir:

Please issue for printing:

Judgment Roll, Assignment of Errors, Petition for
 Writ of Error and Order Allowing Same, Affidavit
 of Service of Writ of Error, Bond on Writ of Error,
 Writ of Error, and Citation.

Lucius K. Chase
 Attorney for defendant.

[Endorsed]: No. 757 At Law United States
 District Court SOUTHERN DISTRICT OF CALI-
 FORNIA J. M. ROSBOROUGH Plaintiff vs
 ELIZABETH HOUSTON, etc. Defendant. PRAE-
 CIPE FOR Transcript on Writ of Error FILED
 APR 30, 1923 CHAS. N. WILLIAMS, Clerk. By
 R S Zimmerman Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

J. M. Rosborough,)	
Plaintiff,)	
- vs -)	
ELIZABETH HOUSTON, as sole	)	CLERK'S
beneficiary under the will of Otho	)	CERTIFICATE.
S. Houston, deceased, and as Ex-)	
ecutrix of the Estate of the said)	
Otho S. Houston, deceased,)	
Defendant.)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 76 pages, numbered from 1 to 76 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by plaintiff in error and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, writ of error, affidavit of service of writ of error, complaint, summons, demurrer, order overruling demurrer, answer, demurrer to answer, order overruling demurrer, minute orders, notice of presentation of findings, findings of fact and conclusions of law, judgment, clerk's certificate to judgment roll, assignment of errors, opinion, petition for writ of error and order allowing same, bond and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of May, in the year of our Lord One Thousand Nine Hundred and Twenty-three, and of our Independence the One Hundred and Forty-seventh.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of Cali-
fornia.

By

Deputy.